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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 GORDON S. HOWELL, SR.,

12 Plaintiff,

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14 vs.

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17 CALAVERAS COUNTY DISTRICT  
18 ATTORNEY; et al.,

19 Defendants.  
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CASE NO. 11 CV 1864 MMA (JMA)

**ORDER:**

**GRANTING MOTION TO  
PROCEED *IN FORMA PAUPERIS*;**

[Doc. No. 2]

**DENYING MOTION FOR  
APPOINTMENT OF COUNSEL;**

[Doc. No. 3]

***SUA SPONTE* DISMISSING  
COMPLAINT UNDER 28 U.S.C. §  
1915(e)(2)(B) FOR FAILURE TO  
STATE A CLAIM**

21 Plaintiff Gordon S. Howell, Sr., proceeding pro se, initiated this civil action against  
22 Defendants “Calaveras County District Attorney and all Representatives” for alleged  
23 constitutional violations regarding Defendants’ efforts to “force” Plaintiff to register as a sex  
24 offender in California. [Doc. No. 1.] Plaintiff contemporaneously filed a motion for leave to  
25 proceed *in forma pauperis* (“IFP”), and a motion for appointment of counsel. [Doc. Nos. 2, 3.]  
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I.

MOTION TO PROCEED IFP

A party instituting any civil action, suit or proceeding in a district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of \$350. *See* 28 U.S.C. § 1914(a). An action may proceed despite a plaintiff's failure to prepay the entire fee only if the plaintiff is granted leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). "To proceed *in forma pauperis* is a privilege not a right." *Smart v. Heinze*, 347 F.2d 114, 116 (9th Cir. 1965).

A party need not be completely destitute to proceed *in forma pauperis*. *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339-40 (1948). But "the same even-handed care must be employed to assure that federal funds are not squandered to underwrite, at public expense, either frivolous claims or the remonstrances of a suitor who is financially able, in whole or in material part, to pull his own oar." *Temple v. Ellerthorpe*, 586 F. Supp. 848, 850 (D.R.I. 1984). Based on the information provided by Plaintiff in support of his IFP motion, the Court **GRANTS** Plaintiff's motion to proceed *in forma pauperis*, but solely for the purpose of resolving the pending motions.

II.

SCREENING PURSUANT TO 28 U.S.C. § 1915(E)(2)(B)

When a plaintiff proceeds IFP, the complaint is subject to mandatory screening and the Court must order the *sua sponte* dismissal of any case it finds "frivolous, malicious, failing to state a claim upon which relief may be granted, or seeking monetary relief from a defendant immune from such relief." 28 U.S.C. § 1915(e)(2)(B); *Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir. 2001) ("[T]he provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited to prisoners.").

"[W]hen determining whether a complaint states a claim, a court must accept as true all allegations of material fact and must construe those facts in the light most favorable to the plaintiff." *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000). In addition, the Court has a duty to liberally construe a *pro se*'s pleadings. *Id.* In giving liberal interpretation to a *pro se* complaint, however, the court may not "supply essential elements of claims that were not initially pled." *Ivey*

1 *v. Board of Regents of the University of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982). For the  
2 reasons set forth below, the Court concludes Plaintiff's complaint does not meet the federal  
3 pleading rules and fails to state a claim upon which relief may be granted.

4 Under the "notice pleading" standard of the Federal Rules of Civil Procedure, a plaintiff's  
5 complaint must provide, in part, a "short and plain statement" of plaintiff's claims showing  
6 entitlement to relief. Fed. R. Civ. P. 8(a)(2); *see also Paulsen v. CNF, Inc.*, 559 F.3d 1061, 1071  
7 (9th Cir. 2009). A complaint should be dismissed for failure to state a claim if, taking all  
8 well-pleaded factual allegations as true, it does not contain "enough facts to state a claim to relief  
9 that is plausible on its face." *See Coto Settlement v. Eisenberg*, 593 F.3d 1031, 1034 (9th Cir.  
10 2010) (quoting *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009)). "A claim has facial plausibility  
11 when the plaintiff pleads factual content that allows the court to draw the reasonable inference that  
12 the defendant is liable for the misconduct alleged." *Caviness v. Horizon Cmty. Learning Ctr., Inc.*,  
13 590 F.3d 806, 812 (9th Cir. 2010) (citation omitted).

14 Additionally, under Federal Rule of Civil Procedure 10(b), a plaintiff should state "each  
15 claim founded on a separate transaction or occurrence" as a "separate count." Fed. R. Civ. P.  
16 10(b). Rule 10 provides that a "party must state its claims or defenses in numbered paragraphs,  
17 each limited as far as practicable to a single set of circumstances." *Id.* Upon due consideration,  
18 Plaintiff's complaint fails to satisfy the pleading standards of Rule 8(a)(2) and Rule 10(b), and is  
19 therefore subject to dismissal. Plaintiff's complaint consists of a single lengthy paragraph,  
20 indicating that he desires a hearing regarding whether he must register as a sex offender for a  
21 conviction that occurred over thirty years ago. [Doc. No. 1.] The document does not list the  
22 parties, nor identify any purported causes of action or specific identifiable conduct by the  
23 defendants. Plaintiff's limited allegations do not satisfy Rules 8(a)(2) and 10(b).

24 In addition, Plaintiff's complaint is subject to dismissal under Rule 12(b)(6) because it fails  
25 to state a claim upon which relief can be granted. Plaintiff alleges only that his constitutional  
26 rights have been violated because he was forced to register as a sex offender after he moved to  
27 California, even though he was "discharged" in 1981 after completing his sentence.

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1 Plaintiff attaches a letter dated January 11, 2011, from the Texas Department of Criminal  
2 Justice which indicates Plaintiff served over two and one half years of a five-year sentence in  
3 Harris County, Texas, for aggravated rape. [Doc. No. 1, Exh. 1.] The letter further states “[t]he  
4 maximum expiration date for this offense was April 29, 1984. [*Id.*] However, even if the Court  
5 considers this letter in reviewing the sufficiency of Plaintiff’s complaint, Plaintiff still fails to state  
6 a claim upon which relief can be granted.

7 Under California Penal Code sections 290 and 290.005 (“Sex Offender Registration Act”),  
8 certain persons must register as sex offenders if they travel to or reside in California. “The  
9 requirement applies to any person ‘convicted’ of one of the enumerated sex crimes in this state or  
10 an equivalent crime in another state.” *In re Watford*, 186 Cal. App. 4th 684, 690 (2010). The Sex  
11 Offender Registration Act “imposes on each person convicted a lifelong obligation to register.  
12 Registration is mandatory.” *Id.* Accordingly, a sex offender must “register based upon the fact of  
13 conviction until such time as the predicate conviction may be invalidated.” *Id.* at 691.

14 Here, Plaintiff provides no detail regarding his underlying conviction, nor allegations that  
15 indicate his predicate conviction has been invalidated. First, it is not entirely clear whether  
16 Plaintiff’s “aggravated rape” charge in Texas qualifies him as a sex offender who must register in  
17 California. However, Plaintiff does not allege the conviction does *not* fall within the Sex Offender  
18 Registration Act’s purview, and therefore he is exempt from the registration requirement. Instead,  
19 Plaintiff argues he completed his sentence in 1981. Second, it is likely Plaintiff’s aggravated rape  
20 conviction qualifies as an offense that requires him to register in California, thus, his assertion that  
21 he served his sentence and was “discharged” is not sufficient to establish that the lifelong  
22 registration obligation imposed by the Sex Offender Registration Act has been lifted. *See In re*  
23 *Parks*, 184 Cal. App. 3d 476, 480-81 (1986) (conviction for forcible rape triggered registration  
24 requirement under the Sex Offender Registration Act.) The mere passage of time after a  
25 qualifying conviction does not relieve a sex offender from his or her duty to register. *In re Parks*,  
26 184 Cal. App. 3d 476, 480-81 (1986) (statute imposes a “lifelong obligation to register”).

27 Plaintiff asserts Defendants “Calaveras County District Attorney and all Representatives”  
28 have violated his right to due process by denying him a hearing on the issue of whether he is

1 required to register. Plaintiff also alleges Defendants' denial of a hearing subjects him to double  
 2 jeopardy. However, Plaintiff provides no indication he is entitled to the relief he seeks. Plaintiff  
 3 fails to allege any facts regarding how long he has been in California, where Plaintiff resides in  
 4 California,<sup>1</sup> whether he has been charged with violating the Sex Offender Registration Act, any  
 5 identifiable actions by Defendants, or which specific Defendants are liable for each alleged  
 6 violation of Plaintiff's constitutional rights. As pled, Plaintiff's limited allegations do not provide  
 7 Defendants notice of the claims against them, and are subject to dismissal for failure to state a  
 8 claim upon which relief can be granted.<sup>2</sup>

9 If Plaintiff desires to proceed with this action, he must file an amended complaint that  
 10 contains sufficient factual allegations against Defendants showing that Plaintiff is entitled to relief.  
 11 At a minimum, Plaintiff must identify the causes of action alleged, supported by a short and plain  
 12 statement of facts to support the elements of those claims, and identify which Defendants he  
 13 contends violated each claim.

### 14 III.

#### 15 MOTION FOR APPOINTMENT OF COUNSEL

16 Also pending before the Court is Plaintiff's request for appointment of counsel under the  
 17 Civil Rights Act of 1964, 42 U.S.C. § 2000e-5(f)(1). [Doc. No. 3.] Although the Court may  
 18 utilize section 2000e to appoint an attorney in certain employment actions under "circumstances as  
 19 the court may deem just," section 2000e appears to be of no use to Plaintiff here, as his complaint  
 20 does not involve employment discrimination. *See* 42 U.S.C. § 2000e-5(f)(1). The Court therefore  
 21 does not have authority under 42 U.S.C. §2000e-5(f)(1) to appoint Plaintiff counsel.

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 25 <sup>1</sup> Plaintiff's mailing address is in Southern California, specifically San Diego, whereas Plaintiff  
 26 is suing a District Attorney's Office in Northern California, specifically Calaveras County. The Sex  
 27 Offender Registration Act requires the offender to register in the city or county where he or she  
 resides. The existing complaint lacks a connection between Defendants in Northern California and  
 Plaintiff's apparent residence in Southern California.

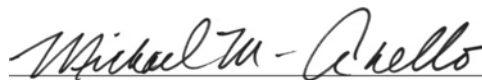
28 <sup>2</sup> To the extent Plaintiff's complaint requests immediate injunctive relief, the request is  
**DENIED** as moot because Plaintiff has not pled a viable cause of action that might entitle him to  
 injunctive relief.



1 (iii) The Court **DENIES** Plaintiff's Request for Appointment of Counsel [Doc. No. 3].

2 **IT IS SO ORDERED.**

3 DATED: August 23, 2011

A handwritten signature in black ink, reading "Michael M. Anello", written over a horizontal line.

4 Hon. Michael M. Anello  
5 United States District Judge  
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